

## Opinion No. 53-5671

February 13, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. R. F. Apodaca Superintendent of Insurance State Corporation Commission  
Santa Fe, New Mexico

{\*63} On February 4, 1953, you addressed an inquiry to this office accompanied with a form, reference to which will be made hereinafter, and asked an opinion of this office as to whether or not the type of organization set out in the above mentioned form comes within the scope of the New Mexico Insurance Laws.

The form submitted by your office is headed "The Protective Force Benefit Association", which caption identifies the organization which is proposing the institution and maintenance of the insurance fund. The document form which you submitted is headed "Pledge". In substance the "Pledge" provides that a member pay \$ 3.00 as an initial installment and \$ 1.00 each successive pay day until an assessment is made against said member in an amount varying from \$ 13.00 to \$ 17.00. The association proposes to set up a "working capital" of approximately \$ 5,000.00 The association "Pledges" itself to pay the beneficiary of a deceased member a total of \$ 1,000.00 and to expend a total amount of \$ 25.00 for "floral tribute". Upon the death of a member the other members shall be required to pay \$ 1.00 each pay day until such time as the working capital fund is restored to the original \$ 5,000.00 amount. The installments are repaid to the member in the event he shall default on any pay day in his contribution. The plan is applicable only during the period that a member is employed by the Atomic Energy Commission at Los Alamos, New Mexico. If for any reason his employment is terminated by or with that commission he receives the sum which he has heretofore paid in. This is a rough digest of the protection benefits of the provisions of the "Pledge" which you submitted to us and upon which you have asked our opinion.

The style of insurance appears on the face of the "Pledge" to more or less contemplate a fraternal benefit society, as defined in § 60-901 N.M.S.A., 1941 Compilation, or a domestic benevolent society, as defined in § 60-939 N.M.S.A., 1941 Compilation. Upon scrutiny of the "Pledge" it becomes apparent that the insurance benefits are not of a class included in the insurance laws applicable to fraternal benefit societies. The form fails to show any "Lodge System" or any "Representative form {\*64} of Government." The fraternal benefit societies and the insurance available to a member of such fraternal society is contemplated in the law to be an incidental part of the operation of a lodge or fraternal organization. It is not contemplated that a lodge or fraternal organization set itself up with the sole purpose of insuring members. This would be in direct contravention of the statutes relating to the fraternal benefit societies and lodges, which organizations and lodges frequently provide insurance for the members of that organization as an additional service to the members.

The "Protective Force Benefit Association" is quite obviously not a fraternal organization or lodge and it meets none of the requirements of the law relating to such fraternal organizations or lodges.

The analysis of this "Pledge" in relation to the laws governing domestic benevolent societies show that the Protective Force Benefit Association does not come within the laws regulating domestic benevolent societies (§ 60-939 N.M.S.A., 1941 Comp.). The organization exceeds the \$ 400.00 limitation set in the statute as the maximum amount allowed to be paid by a society under this law. There is no description of the officers and no showing whatsoever that the organization has been incorporated or taken any steps to incorporate. There is no mention of a contract to be issued to any member as required by the statutes relating to such societies. The Protective Force Benefit Association has not shown it has complied with any of the requirements set forth in the law relative to domestic benevolent societies.

In view of the fact that this socalled "Pledge" does not comply with the laws relative to fraternal benefit societies or to the laws relative to domestic benevolent societies, it can only exist under the laws of a general mutual insurance company (§ 60-301 N.M.S.A., 1941 Comp.). The Protective Force Benefit Association, if they desire to subsist, must comply with the general laws applicable to insurance companies.

It is therefore the opinion of this office that the form submitted in your letter does not in any way comply with the laws relative to insurance in the State of New Mexico and until such laws are complied with, under the statute setting out your duties as Superintendent of Insurance, it is your duty to force this organization to refrain from any operation of any nature whatsoever.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General